

**VOLUSIA SHERIFF'S OFFICE
INTERNAL AFFAIRS**

REPORT OF INVESTIGATION

REPORT NUMBER: IA 21-017

PERIOD COVERED: December 16, 2021
DATE REPORTED: December 18, 2021
SUBJECT(S) NAME: Deputy Bryan Luoma, #2513
INVESTIGATING OFFICER: Sergeant Ben Gordon, #7744

BASIS FOR INVESTIGATION:

On December 16, 2021, VSO deputies conducted a traffic stop on a vehicle in the area of E Roberts St and S Volusia Ave, Orange City. The vehicle in question was registered to Joel Hernandez who was a suspect in a recent theft of a firearm case. Hernandez was located inside the vehicle in the rear passenger seat. During the traffic stop, deputies attempted to utilize a K9 to conduct an exterior narcotic sniff on the vehicle, at which time all occupants were required to exit the vehicle.

While exiting the vehicle, Hernandez began to resist the deputies' commands to exit the vehicle, attempted to conceal illegal narcotics in the seat where he was sitting. Hernandez was ultimately secured in handcuffs and brought to the front of an un-marked VSO vehicle to be thoroughly searched. During the search, Hernandez continued to resist deputies' efforts to be searched which resulted in K9 Deputy Luoma using several physical techniques in response to the level of resistance exhibited by Hernandez. During this time, it was observed Hernandez had narcotics within his mouth. As Hernandez attempted to destroy or ingest the narcotics by swallowing them, Deputy Luoma utilized a closed hand strike to the right side of Hernandez's face to distract and prevent Hernandez from doing so. Deputy Luoma's actions prevented Hernandez from destroying or ingesting the narcotics; however, Sergeant Bello, the highest-ranking deputy on-scene, concluded lesser degree of force options were available to distract or prevent Hernandez from destroying or ingesting the narcotics, and these options could have been utilized by Deputy Luoma during the incident.

Sergeant Bello completed a “Response to Resistance” report, at which time the facts and circumstances surrounding Deputy Luoma’s actions were documented and forwarded through the chain of command for review.

OFFENSES:

GO-026-02.IV.B.3 – Any other conduct or action, on-duty or off-duty, of such seriousness that disciplinary action is considered warranted.

GO-026-02.IV.C.5.g – Failure to Follow General Order, Standard Operation Procedure, or Order – Employees shall adhere to all official general orders, standard operational procedures, and orders, and shall faithfully execute all the duties and responsibilities of the assigned position.

GO-026-02.IV.D.7.c – Excessive Force Resulting in Injury – Deputies shall not use excessive force resulting in injury to another.

GO-026-02.IV.D.9.p – Use of Equipment: BWC – Employees shall ensure proper maintenance and utilization of VSO BWC (body-worn cameras) for its intended purpose and in accordance with general order *GO-041-20 Body-Worn Cameras*.

GO-026-02.IV.G.1.a – General Proficiency – VSO personnel are required to maintain the job knowledge, skills and abilities required for the performance of the duties and responsibilities attendant to their positions.

GO-026-02.IV.G.2.a – Knowledge of Official General Orders and Pertinent Standard Operating Procedures – VSO personnel are required to possess a sound working knowledge of the policies and procedures established by general orders and standard operating procedures.

INVESTIGATION:

On December 28, 2021, Chief Deputy Joseph Gallagher assigned the above incident to the Internal Affairs Unit. This report details the Internal Affairs investigation conducted by Sergeant Ben Gordon.

On December 29, 2021, Sergeant Gordon served Deputy Luoma with a Notice of Internal Investigation. Deputy Luoma was also provided a copy of his Law Enforcement Officer’s Bill of Rights. Deputy Luoma signed both documents acknowledging his receipt of the documents.

Sergeant Gordon obtained and reviewed Volusia Sheriff’s Office reports authored under case number 210023726 and the Response to Resistance RTR 21-053 completed by Sergeant Bello.

Sergeant Bello documented the following excerpts in RTR 21-053:

“On December 16, 2021, at approximately 1619 hours, Deputy Gray conducted a traffic stop on the aforementioned vehicle at the intersection of S. Volusia Avenue and Roberts Street, Orange City. Sergeant Bello and Deputy Richardson responded as backup. Deputy Luoma was requested and responded to the stop, along with Deputy Matusick, to conduct an exterior sniff of the vehicle for narcotics. The driver of the vehicle was Ana Maria Figueroa. The other occupants of the vehicle were Tara Tillis, who was seated in the front passenger seat, and Hernandez, who was seated in the rear passenger side seat. While removing the occupants from the vehicle, Hernandez was observed attempting to conceal narcotics in the door compartment. Hernandez subsequently resisted arrest by tensing his right arm, pulling his arm away from Deputy Gray, and reaching into the vehicle with his left arm. This was observed on Deputy Gray’s BWC footage. After a brief struggle, Hernandez was detained in handcuffs and escorted to the front of Deputy Gray’s patrol vehicle to conduct a search incident to arrest.”

Sergeant Bello then described Hernandez’s actions at the front of the vehicle and immediately before the application of force by Deputy Luoma:

“During a search of his person, Hernandez began to make furtive movements in an attempt to reach inside his waistband and pockets. After being told several times to stand still and to stop resisting, Hernandez continued to pull his arms away from Deputy Gray. Deputy Luoma noticed Hernandez had one of his fists clenched and began to pry his hand open. Hernandez shouted in pain and turned towards Deputy Luoma, at which time Deputy Luoma applied a shoulder-lock escort hold using his left arm and pinned Hernandez’s head onto the hood of the vehicle. Hernandez continued to struggle and made several attempts to lift his head off the car, despite Deputy Luoma’s direction to stay on the car. Hernandez exhaled heavily, which ejected a blue in color Alprazolam tablet out of his mouth and onto the hood of the vehicle. Hernandez immediately lunged his head forward with his mouth open and tongue out in an attempt to ingest or destroy the pill, at which point Deputy Luoma used both hands to push Hernandez’s face away from the pill and then delivered a closed hand strike to Hernandez’s right cheek, thereby ceasing his efforts to consume the pill.”

Sergeant Bello detailed his, Deputy Luoma’s, and Hernandez’s actions immediately after the application of force:

“Sergeant Bello was standing on the passenger side of Deputy Gray’s vehicle while this transpired and could only see the back of Hernandez’s head. Upon witnessing the strike to Hernandez’s face, Sergeant Bello told Deputy Luoma to stop, at which point he [Deputy Luoma] replied, “There’s more of it in his mouth,” referring to “it” being narcotics. Hernandez became irate and continued

to struggle while Deputy Gray was attempting to search him. Hernandez screamed out, "You're breaking my wrist!" but there was no form of wrist manipulation being applied at that time. Deputy Luoma's hand was holding Hernandez's right arm above the wrist, and it appeared as though Hernandez had repositioned his wrist perpendicular to the elongated portion of the cuff, which resulted in discomfort."

Sergeant Bello then detailed Hernandez's consistently irate and irrational behavior, including lunging out of the open door to the patrol vehicle, kicking the doors/windows, and being belligerent towards deputies and medical personnel.

Sergeant Bello indicated Hernandez had visible swelling on his right cheek and sustained visible swelling and a minor laceration from his self-inflicted fall out of the patrol vehicle on the left side of his face. Sergeant Bello wrote that Hernandez complained of an injury to his face and wrist; however, there was no visible disfigurement or discoloration of Hernandez's wrists, which was verified by EVAC personnel.

Sergeant Bello wrote that he was unable to interview Hernandez on scene due to his erratic and belligerent behavior, and Hernandez was transported by EVAC to Advent Health Fish Memorial Hospital in Orange City for further medical evaluation.

Sergeant Bello detailed that shortly thereafter; Hernandez was discharged and transported to the Volusia County Branch Jail and was charged with Possession of Cocaine, Possession of a Schedule IV Controlled Substance, Resisting Arrest with Violence, and Tampering with Evidence.

Sergeant Bello wrote he reviewed all Body-Worn Camera (BWC) recordings from this event, which were consistent with the reports submitted by deputies who were involved.

Sergeant Bello indicated "...upon review of Deputy Luoma's BWC recording, it is evident the BWC was in buffering mode for ninety seconds but was not activated until Deputy Luoma makes first contact with Hernandez. Deputy Luoma is observed exiting his patrol vehicle and preparing his lead for a K9 deployment, which is common practice among K9 handlers when he observed Deputy Gray struggling with Hernandez at the car door. Deputy Luoma abruptly ran over to the driver side of the vehicle to assist Deputy Gray by preventing Hernandez from obtaining whatever item he was reaching for at the time. With that, Sergeant Bello determined Deputy Luoma failed to activate his BWC in accordance with Volusia Sheriff's Office General Orders."

Sergeant Bello provided the following conclusion to the Response to Resistance report:

"With prior intelligence of Hernandez possibly possessing a stolen firearm, coupled with his furtive movements and level of resistance, it was reasonable for deputies to maintain physical

control of Hernandez. It was especially important to maintain control of his hands, which is what Deputy Luoma achieved by placing Hernandez in a shoulder lock against the vehicle.

It is obvious that Hernandez was attempting to consume the Alprazolam in order to destroy evidence which would be used against him. When this occurred, Deputy Luoma believed Hernandez had additional narcotics in his mouth which needed to be extracted. Furthermore, it was unknown what quantity of narcotics Hernandez had already consumed during the detention in an effort to conceal them from law enforcement. Deputy Luoma's closed hand strike to the face, although effective, is not an approved method to deter a handcuffed subject from ingesting narcotics or destroying evidence.

Sergeant Bello found the actions of Deputy Luoma are not taught by the Volusia Sheriff's Office Training Division as a typical way to ensure evidence is not destroyed. In addition to Hernandez being secured in handcuffs, he was being controlled by two deputies of large stature. Therefore, the totality of circumstances should have dictated a lesser degree of force."

Based on the totality of the facts and circumstances surrounding the Response to Resistance report authored by Sergeant Bello, Chief Deputy Gallagher assigned the investigation to Internal Affairs for further investigation.

On January 13, 2022, Sergeant Gordon attempted to reach Tara Tillis and Ana Figueroa via telephone on their listed phone numbers; however, no contact was made, and attempts to have them return calls were met with negative results.

On January 18, 2022, Sergeant Gordon and Sergeant Calkins met with Hernandez at the Volusia County Branch Jail. Sergeant Gordon explained to Hernandez the nature of the visit and asked if he was willing to provide a statement in reference to the investigation. Hernandez told Sergeant Gordon he needed to check with his attorney prior to discussing the matter. Sergeant Gordon provided Hernandez with a business card and encouraged him to contact the Sheriff's Office if he wished to participate in the investigation. Neither Hernandez nor his attorney has contacted Internal Affairs, and Hernandez has been unwilling to participate in an interview as of the writing of this report.

A Body-Worn Camera (BWC) audit for Deputy Luoma's BWC history was obtained for the date of the incident. Audit item #223 showed the Event Button was pressed at 1621 hours on Deputy Luoma's BWC. A review of the BWC footage from the incident and audit confirmed Deputy Luoma activated his BWC after he was outside his vehicle for approximately 50 seconds.

On January 21, 2022, Sergeant Gordon sent certified letters to both Tillis and Figueroa in an attempt to ascertain their willingness to participate in an interview.

On January 22, 2022, Sergeant Gordon was notified Figueroa had received her letter; however, she was not willing to participate in the investigation.

It should be noted no confirmation was obtained Tillis had received her letter. On February 11, 2022, Sergeant Gordon and Sergeant Calkins went to Tillis' last known recorded address in an attempt to make contact with her in reference to the investigation; however, Tillis was unable to be contacted at the location, as the residence appeared vacant. A search of all available law enforcement databases was conducted in an attempt to locate any additional phone numbers or current places of residence for Tillis, with negative results.

Interview with Deputy Nicole Richardson

On January 06, 2022, at approximately 1300 hours, Sergeant Gordon conducted a sworn recorded interview with Deputy Nicole Richardson. The interview was conducted at 123 West Indiana Avenue, DeLand, at the Sheriff's Office Administration Building. Present for the interview was Deputy Richardson, Sergeant Gordon, and Sergeant Calkins. Below is a synopsis of the audio recorded interview:

Deputy Richardson was assigned to the District 4 CST Unit while working on December 16, 2021. During her shift, she and the CST unit attempted to locate a maroon 2006 Chevrolet Trailblazer. The vehicle was registered to Hernandez, who was a possible suspect in a recent firearm theft case. The vehicle was located and a traffic stop was conducted on the vehicle at the intersection of S Volusia Avenue and Roberts Street in Orange City. Inside the vehicle were three subjects, Tillis, Figueroa, and Hernandez.

During the incident, Deputy Richardson advised the majority of her interaction was with Tillis. Deputy Richardson explained Deputy Gray contacted the driver (Figueroa) and brought her back to his unmarked pick-up truck for further investigation. Deputy Richardson was tasked with monitoring the behavior of Tillis and Hernandez. As the traffic stop progressed, it was determined all occupants would be removed in order for an exterior narcotic sniff to commence.

According to Deputy Richardson, she recalled the following: *"I was dealing with the front female passenger. As I was getting her out, I heard a commotion in the backseat while Deputy Gray was getting the male out. And I secured her because of the commotion. They were tussling for a minute, and then someone else came to help him. I don't know who another deputy came to help him. Somebody came helped get him out. And we walked him towards the back of the car."*

Deputy Richardson was unable to see what occurred in the back of the vehicle due to maintaining control of Tillis during the incident. Due to the commotion, all subjects were secured and brought back to the front of Deputy Gray's un-marked pick-up truck.

As Deputy Richardson began searching Tillis (near the driver's door of Deputy Gray's un-marked pick-up truck), she heard Hernandez scream. It should be noted, Deputy Richardson was asked specially about the force utilized by Deputy Luoma; however, she did not witness any of the concerns documented by Sergeant Bello. Deputy Richardson was focused on completing the search on Tillis and then securing her in a nearby patrol vehicle. After Tillis was secured in a vehicle, Deputy Richardson went to assist the deputies dealing with Hernandez.

When Deputy Richardson approached Hernandez's location Richardson stated, "*...he [Hernandez] was yelling you're breaking my wrist you're breaking my wrist and I could see that a Brian Luoma had his, his wrists are handcuffed but they were in a lifted position but they weren't twisted or anything in an awkward way. So I just figured he was screaming for attention.*"

As Hernandez was being searched Deputy Richardson noted, "*He kept screaming I looked and even the handcuffs were coming down over the ball of his wrist so they even looked loose to me. So when he finally calmed down and rested his hands I secured the cuffs better and double locked them so I knew they wouldn't move at all. And then from there, he seemed to cooperate a little bit better.*"

Deputy Richardson stated Sgt. Bello, Deputy Gray, and Deputy Luoma later placed Hernandez in the back of her vehicle. Deputy Richardson heard Hernandez begin to scream again and observed him being placed in the vehicle and shortly thereafter exiting out the other side. Deputy Richardson did not witness what caused the commotion. According to Deputy Richardson, Hernandez was transported to Advent Health Fish Memorial in Orange City via EVAC. After being medically cleared from the hospital, Hernandez was then transported to the Volusia County Branch Jail.

Interview with Deputy Lindsey Matusick

On January 06, 2022, at approximately 1343 hours, Sergeant Gordon conducted a sworn recorded interview with Deputy Lindsey Matusick. The interview was conducted at 123 West Indiana Avenue, DeLand, at the Sheriff's Office Administration Building. Present for the interview was Deputy Matusick, Sergeant Gordon, and Sergeant Calkins. Below is a synopsis of the audio recorded interview:

On December 16, 2021, Deputy Matusick was working as a K-9 handler for the City of DeBary. Deputy Matusick responded to the traffic stop at the intersection of S Volusia Avenue and Roberts Street in Orange City as a backup unit. Upon Deputy Matusick's arrival at the traffic stop, she was informed one of the subjects inside the vehicle was a possible suspect in a firearm theft case. Deputy Matusick recalled, "*Once we arrived on scene, the Deltona CST units were already getting subjects out of the car. I'm assuming for preparation for a dog sniff or a narcotics sniff by dog. Me*

and believe Deputy Brian Luoma was still behind the pack. I walked up front and observed Donnie Gray getting the passenger rear passenger from the backseat of the car and he was compliant up until the point where Donnie Gray I believe was going to, he started reaching in the car and Donnie Gray decided he was going to go ahead and secure him.”

According to Deputy Matusick, once Deputy Gray attempted to secure Hernandez, “...*he [Hernandez] was flailing around and screaming and, and acting I guess like a fool.”* Deputy Gray was eventually able to secure Hernandez and moved him to the front of his un-marked pick-up truck in order to conduct a search of his person. Deputy Matusick explained when Deputy Gray was initially attempting to secure Hernandez, Deputy Gray located narcotics in the vehicle next to Hernandez.

As Deputy Gray began to search Hernandez, Deputy Matusick noted the following, “*He [Hernandez] started screaming trying to drop to his knees just did not want to be searched, which of course raised concern because it seemed to be every time he would go next to his groin area. So he kept trying to drop either way they were concerned that there might be a firearm in his pants hidden in his pants. So I went over and I believe at that point is when Deputy Brian Luoma went to the other side of the truck, so Deputy Brian Luoma would have been on the driver’s side and Donnie would have been in the middle by the grill. And then I was on the passenger side and the male just became belligerent screaming that he was, we were breaking his hands, but nobody was touching his hands. I mean, just screaming uncontrollably.”*

Because of these actions, Deputy Matusick witnessed Deputy Luoma raise Hernandez’s arms (which were behind his back due to being handcuffed) to prohibit Hernandez from being able to access his own waistband area. Deputy Matusick stated, “*I observed Dep, Luoma just raise his arms up and so they would have been handcuffed behind his back. And Deputy Luoma just very simply raised his arms up not to access just to gain some type of compliance to keep him standing so that Deputy Gray could search his pants, search his waistband search that area.”*

As Hernandez continued his non-compliant behavior, Deputy Matusick said, “*I heard the male say, you punched me or he punched me or something to that effect. And I heard Deputy Luoma say, he's eating dope, or it's in his mouth. Something to that, I looked on the hood saw a blue pill, which was consistent with Xanax or some type of prescription medication. And at that point, he was able, he was controlled.”* Deputy Matusick explained due to her being on the opposite side of Hernandez, she did not directly observe Deputy Luoma strike Hernandez.

Deputy Matusick was questioned in reference to when Hernandez was placed in the patrol vehicle. Deputy Matusick answered and said after Hernandez was moved from the truck, she went and began to search the suspect vehicle. Deputy Matusick did mention hearing Hernandez begin

yelling and screaming while on the ground again but deferred to the deputies who were involved for the specifics.

Deputy Matusick went to Advent Health Fish Memorial for a brief period of time. While at the hospital, Deputy Matusick was informed that Hernandez continued his belligerent behavior with the hospital staff and at one point attempted to escape from his handcuffs.

Interview with Sergeant Omar Bello

On January 06, 2022, at approximately 1347 hours, Sergeant Gordon conducted a sworn recorded interview with Sergeant Omar Bello. The interview was conducted at 123 West Indiana Avenue, DeLand, at the Sheriff's Office Administration Building. Present for the interview was Sergeant Bello, Sergeant Gordon, and Sergeant Calkins. Below is a synopsis of the audio-recorded interview:

On December 7, 2021, Sergeant Bello received an email from Detective Winhoven in reference to Joel Hernandez being a suspect in a firearm theft case, and that he was attempting to locate him and/or any potential leads for his investigation. District 4 Crime Suppression Team began actively searching for Hernandez.

On December 16, 2021, Deputy Gray located a vehicle that was owned by Hernandez. Deputy Gray conducted a traffic stop on the vehicle at the intersection of S Volusia Avenue and Roberts Street in Orange City. Sergeant Bello responded to the traffic stop initiated by Deputy Gray and arrived on-scene as the third unit.

When Sergeant Bello arrived, Deputy Gray was in contact with the driver of the vehicle (Figueroa) while Deputy Richardson was speaking with Tillis and Hernandez (who were still inside the vehicle). According to Sergeant Bello, the plan was to have Deputy Luoma bring his K-9 to the traffic stop and conduct an exterior narcotic sniff on the vehicle. Sergeant Bello began speaking with Figueroa which freed up Deputy Gray to begin removing the occupants of the vehicle in preparation for the narcotic sniff.

Deputy Luoma arrived on scene at which point Deputy Gray opened the rear passenger-side door (where Hernandez was located). As Deputy Gray opened the vehicle door, Sergeant Bello saw, "*Joel Hernandez abruptly put his hand into the driver door compartment where he dropped something into it.*" Sergeant Bello relayed the information to Deputy Gray at which point, Deputy Gray observed what he believed was narcotics and went to secure Hernandez. Sergeant Bello observed Hernandez, "*tensed up and start fighting with him.*" Deputy Matusick arrived and went to assist in securing Hernandez, and after a brief struggle, Hernandez was secured and then moved to the front of Deputy Gray's pick-up truck.

While at Deputy Gray's vehicle, Hernandez was searched by Deputy Gray. Deputy Luoma was positioned on the right side of Hernandez while Deputy Matusick was on the left side of Hernandez. Sergeant Bello was located near the front passenger door of Deputy Gray's un-marked pick-up truck. Sergeant Bello advised he observed the entirety of the search and the events leading up to the strike by Deputy Luoma.

While Hernandez was being searched, Sergeant Bello said, "...he [Hernandez] gets placed up against the hood of Deputy Gray's vehicle and I'm facing, I'm facing them from the passenger side. As soon as he, Joel Hernandez is placed against the truck I can see him reaching he's handcuffed behind his back, but I can see him reaching his hands around to his left side and like digging his fingers in his waistband and trying to get into his pockets and stuff. I believe I even like reached forward and grabbed his hand and said stop reaching or you're gonna end up on the ground something to that effect. He told me he understood. They started searching him, at which point he kept moving his hands. I couldn't see but it looked like he was moving his hands to the other side of his body on the right side."

Sergeant Bello stated he observed Deputy Luoma grab Hernandez's fingers and apply a pain compliance technique. This caused Hernandez's uncompliant behavior to escalate further. Deputy Luoma then utilized an arm lock/shoulder lock to pin Hernandez to the hood of Deputy Gray's vehicle. The incident progressed further which lead to Hernandez attempting to kick off the front bumper of the vehicle and reposition himself. Deputy Luoma then took Hernandez's hand and lifted them up which caused Hernandez to be pinned to the hood using his own body weight. Sergeant Bello explained there was a dialogue between Deputy Luoma and Hernandez but was unable to hear what was said.

After the brief dialogue, Sergeant Bello recalled the following, "And then I just see Luoma deliver a closed fist strike to Hernandez's face. So upon seeing that, from my vantage point, it didn't look great. I didn't know what was happening on that side of the truck. So I said "stop." Deputy Luoma immediately stopped he didn't deliver another strike. And then he verbalized to me that there was there was more drugs or that there were more drugs in his mouth. So at that point, I knew that it had served a purpose that there was a reason for him doing what he did."

After the strike, Sergeant Bello noted Hernandez continued his non-compliant behavior by screaming and trying to "pull off of the hood." After a search of Hernandez was completed, he was relocated to one of the nearby patrol vehicles. As Hernandez was being moved, he continued to drop his weight and kept pulling away from the deputies. Seeing the behavior, Sergeant Bello went to the other side of the patrol vehicle and opened the rear passenger-side door. Sergeant Bello believed his assistance might be necessary to get Hernandez into the back of the patrol vehicle.

As the deputies bring Hernandez to the patrol vehicle, Sergeant Bello recalled, “...they face him towards the car, he lunges in, he get he puts his left foot on the rocker plate of the vehicle and his right knee on the seat. And then he essentially runs himself across the seat and then dives out the passenger side of the car onto his face. Right at right at my feet. So I asked him what he was doing. I told him to stop; picked him up, he continued to be difficult. I think we ended up getting him back in the car. At that point, he had like blood in his mouth. And so Luoma didn't want any, any blood getting spit on us or anything like that. So he put a spit mask on Hernandez. I went back to try and search the vehicle. He kept screaming at one point he started trying to kick out the windows of the patrol vehicle. We were anticipating trying to hobble him. Hernandez had complaints that he couldn't breathe. So we, we called for EVAC to come check him out. He continued to lay on his back, even though we tried to sit him up. So we didn't have any type of in custody death or something like that. He was using force to try and remain on his back the whole time.”

Sergeant Bello concluded by agreeing with the statement previously documented in the original Response to Resistance he completed, which stated, “...the totality of circumstances should have dictated a lesser degree of force.”

Interview with Deputy Donald Gray

On January 14, 2022, at approximately 1311 hours, Sergeant Gordon conducted a sworn recorded interview with Deputy Donald Gray. The interview was conducted at 123 West Indiana Avenue, DeLand, at the Sheriff's Office Administration Building. Present for the interview were Deputy Gray, Sergeant Gordon, and Sergeant Calkins. Below is a synopsis of the audio-recorded interview:

On December 16, 2021, Deputy Gray was assigned to the Deltona Crime Suppression Team (CST) and was actively looking for a vehicle that was connected to Joel Hernandez. As stated previously Hernandez was possibly involved in a recent firearm theft case. Deputy Gray located the vehicle and conducted a traffic stop at the intersection of S Volusia Avenue and Roberts Street in Orange City. Inside the vehicle were three occupants, later identified as Tillis, Figueroa, and Hernandez.

Deputy Gray first made contact with Figueroa who admitted to not possessing a valid driver's license. Deputy Gray had Figueroa exit the vehicle and walk back to his un-marked pick-up truck. During this time, Deputy Richardson made contact with Hernandez and Tillis who were still located inside the vehicle. Deputy Luoma was already in route to assist with a narcotic sniff. Sergeant Bello arrived on scene at which point Deputy Gray had Figueroa stay with Sergeant Bello. In preparation for the narcotic sniff, Deputy Gray went back to the vehicle and ordered the occupants out. As Deputy Gray opened the rear passenger-side door, he observed prescription medication he was able to identify as a “Xanax bar” in the interior of the door handle.

Deputy Gray said he then went to detain Hernandez at which point he began to resist. According to Deputy Gray, *"he [Hernandez] tensed up, turned and with his left hand reached into the vehicle mean with the information I had that he's a suspect with a firearm I didn't know if that's what he was going to reach for. So I kept positive contact on him. Got his hands, at that time Deputy Matusick ran up helped me secure him in handcuffs; we get them out of the vehicle."*

Hernandez was moved to the front of Deputy Gray's un-marked pick-up truck in order to be searched before being placed in a patrol vehicle. As Deputy Gray was attempting to search Hernandez, he stated Hernandez became more belligerent and refused to comply with the verbal commands. Deputy Gray stated, *"...as I'm trying to conduct a search, Deputy Luoma is on my right. Trying we're trying to keep them from making these movements. He's tensing up posturing off the vehicle. One point, Sgt. Bello said hey, watch his hands he's digging into his waistband. I looked down and he was had his hands behind his back but he was digging into the left side of his pants. I grabbed his hands as well does Deputy Luoma."*

During this time, he stated Deputy Luoma utilized pain compliance in order to open Hernandez's clenched hands. Deputy Gray advised they had not cleared Hernandez's hands yet and was concerned about the possibility of there being a weapon or more narcotics. Deputy Gray continued, *"...as he's [Hernandez] posturing off the vehicle at one point, Deputy Luoma placed his head on top of my hood of my car to keep him from posturing and moving back, because like I said he's not listening to commands to stay still while I conduct a search."*

Deputy Gray stated he then continued to the search of Hernandez when he heard a "smack" and noticed Deputy Luoma had struck Hernandez on the right side of his face. Deputy Gray stated he only observed the strike out of the corner of his eye. At that point, Deputy Gray heard Deputy Luoma say something to the effect of *"he's eating dope he's eating dope."* Deputy Gray then grabbed Hernandez's jawline and had him open his mouth. Deputy Gray was unable to observe any narcotics inside his mouth at that time; however, he did observe what he believed to be a Xanax bar on the hood of his un-marked pick-up truck. Deputy Luoma told him, the Xanax bar fell out of his mouth.

After Deputy Gray said he completed the search, Hernandez was moved to a patrol vehicle in order for Deputy Gray to search his shoes. He stated due to the level of non-compliance exhibited by Hernandez at that point, Sergeant Bello went to the other side of the patrol vehicle and opened the rear door. Once Hernandez was near the vehicle, he appeared to calm down and show signs of compliance. As such, Deputy Gray started to place him into the patrol vehicle headfirst and notices his foot on the rocker area of the back seat. When Hernandez entered the rear area of the patrol vehicle, he kicked off the rocker, which propelled him over the rear seat and out the other side of the door. Sergeant Bello and Deputy Luoma picked Hernandez off the ground and were able to get

him inside the patrol vehicle. EVAC was notified and responded to the scene. Hernandez was then transported to Advent Health Fish Memorial.

Deputy Gray stayed with Hernandez during his term at the hospital. At one point, Hernandez attempted to slip his hand through the handcuff in order to attempt an escape from custody. Additionally, Hernandez pulled his pants down and threatened to defecate on the hospital bed when a doctor told him he could not use the restroom at the time. Deputy Gray stated Hernandez was loud, belligerent, crass, unruly, and verbally abusive with Deputy Gray and the medical staff who were attempting to provide care to him during the majority of his stay at the hospital.

Interview with Deputy Bryan Luoma

On February 23, 2022, at approximately 1137 hours, Sergeant Gordon conducted a sworn recorded interview with Deputy Bryan Luoma. The interview was conducted at 123 West Indiana Avenue, DeLand, at the Sheriff's Office Administration Building. Present for the interview was Deputy Luoma, Attorney Gary Wilson, Sergeant Gordon, and Sergeant Calkins. Below is a synopsis of the audio-recorded interview:

Prior to conducting the interview, Deputy Luoma signed a copy of his Garrity Warning, acknowledging his understanding of the document. This was completed in the presence of the previously mentioned personnel. Deputy Luoma was read a Volusia Sheriff's Office Administration of Oath / Perjury Warning. This document was signed by Sergeant Gordon in the presence of the same previously mentioned personnel.

Deputy Luoma advised he was working on December 16, 2021, in the capacity of a K9 handler for the city of Deltona. Near the conclusion of his shift, Sergeant Bello requested his assistance for a traffic stop in the area of S. Volusia Avenue and Roberts Street in Orange City. Joel Hernandez was seen traveling in his maroon 2006 Chevrolet Trailblazer and was stopped by Deputy Gray at the aforementioned intersection. Deputy Luoma stated he was made aware Hernandez was a suspect in a recent theft of a firearm case actively being investigated.

When Deputy Luoma arrived on scene, he recalled the following, *"I believe I was the last one to get there behind Deputy Matusick. I was talking to her at the time that I'd gotten a call from Sgt. Bello. Due to the late afternoon or the late evening, it was 5 to 5:15 in the afternoon. My shift ends at six. I told her I would come with her and do a quick drug sniff and then I'd be on my way home. Obviously that turned out not to happen. I was the last one to get there. I got out of my patrol car and was ready to go meet with her to discuss whether she was going to do the sniff, if I was gonna do, utilize my canine partner to do the sniff. Which point in time I saw Deputy Gray struggling with Mr. Hernandez at the rear passenger side open car door."*

Deputy Luoma was asked if there was a justifiable reason for his late Body-Worn Camera activation to which he responded, "*justifiable, no.*"

Deputy Luoma observed Deputy Gray attempting to detain Hernandez on the rear passenger side of the vehicle. Deputy Luoma opened the rear driver-side door due to Hernandez potentially reaching for a weapon or discarding an unknown item. Hernandez secured by Deputy Gray and escorted to the front of Deputy Gray's un-marked pick-up truck.

During the initial incident with Deputy Gray, Deputy Luoma described Hernandez's behavior as "*Obviously, the active resistance that I saw of him trying to reach into or get into the passenger side of the vehicle and then having to have not only Deputy Gray but also Deputy Matusick both of them struggle with him to get him handcuffed. And then walking to the front of the car. He was a little resistant not wanting to walk as far as stiffening his legs or pushing against deputies, Deputy Gray's attempt to walk him to or escort him to the front of patrol car.*"

While at the front of Deputy Gray's vehicle, Deputy Gray began to search Hernandez. While Hernandez was being searched, Deputy Luoma noted the following, "*Mr. Hernandez started reaching into his, even though he was handcuffed, started reaching into his waistband reached into his pockets or over to his left side. Every time that Deputy Gray would get to the area of his waistband or to his groin area. Mr. Hernandez would get verbally loud kind of whine and complain and then start pushing off or I guess try to stand up or just a push up against the push himself off the front of the truck.*"

Due to the behavior exhibited by Hernandez and the belief that he may have something concealed on his person or in his hands, Deputy Luoma stepped in to assist. According to Deputy Luoma, Hernandez was given multiple commands to stop reaching into his clothing and to stop resisting; however, Hernandez failed to follow those commands.

As Hernandez continued Deputy Luoma recalled "*I grabbed ahold of his right shoulder and then his left wrist, he immediately tensed up, began stiff arming and resisting any kind of efforts I had to control his arms kept trying to reach around, push off the front of the truck at a couple of different points he was using his knees to push off the bumper. And as soon as I made contact with him, he started screaming and hollering that I was breaking his wrist. I did bend his wrist up in a risk control technique. He clenched his fist up not knowing if he had any drugs. Deputy Gray had removed a, some marijuana from his front left pocket. Not knowing if he had any more drugs on him or concealing his clenched fist I did pry open his hands. His hands were clear of any kind of narcotics; at which point he continued to scream and that I was breaking his wrist even though I wasn't touching his wrist. I ended up using instead of to get him to stop from screaming that I was breaking his wrist, I ended up using a bit of leverage by taking my left arm and putting it up underneath or through his right arm and putting my hand on his head and pushing him up against*

the truck and kind of lifting my elbow up to use this leverage against him to keep up against the truck.”

Deputy Luoma utilized a shoulder lock technique in order to keep Hernandez pinned to the vehicle and to prevent Hernandez from accessing his clothing. While Hernandez was in the shoulder lock, he continued his defiant behavior. Deputy Luoma stated, *“At one point when I went to go push his head back down again a blue pill came out of his mouth. From that point, I had my right hand on the on the truck or the hood of the truck. When he pulled his head up again, I could see that he looked at the blue pill that came out of his out of the mouth. He looked at it opened his mouth, he was going to move over to try to eat it or to, to ingest it. At which point in time, I took my right hand off the hood and went to go push his head back down. And when I saw his head turned with an open mouth towards my, my hand, I clenched my fist and I struck him on the right side of his face.”*

After Deputy Luoma struck Hernandez, Deputy Luoma explained, *“As soon as I struck him it had the immediate effect of stunning him. He seized momentarily anyway, for any kind of attempt for active resistance. At which point in time I let Deputy Gray know that he's trying to swallow dope or he's got more drugs in his mouth. At which point, you know he started you know becoming more verbally loud yelling oh my god, and then acknowledging that I have struck him in the face.”*

Deputy Gray was eventually able to complete his search of Hernandez; however, it was discussed that his shoes needed to be searched prior to transportation. Deputy Gray transferred Hernandez to a nearby patrol vehicle. When speaking about this point in the incident, Deputy Luoma stated, *“Once we got over to the back of I believe it was Deputy Richardson's marked patrol car, Mr. Hernandez saw one of the passengers in the car along with Deputy Richardson, at which point in time he ramped back up again. Ramped his behavior and his resistance back up again, screaming and yelling that we were hurting him breaking his wrist and nobody at that time was even touching his wrist. He dropped to his knees or dropped to his knees where he threw his legs out from underneath him, and basically threw himself to the ground as an act of a child throwing a temper tantrum.”*

Deputy Luoma explained that due to the size of both he and Deputy Gray, only one of them was able to fit inside the door jam. Therefore, Deputy Gray was in charge of placing Hernandez into the back of the patrol vehicle. While Deputy Gray was putting Hernandez into the patrol vehicle, Deputy Luoma heard Sergeant Bello on the other side talking to Hernandez. Deputy Luoma did not see what caused Hernandez's repositioning due to his vantage point. Upon hearing Sergeant Bello, Deputy Luoma went to the other side of the patrol vehicle to assist.

Hernandez was picked up from the ground and placed back inside the patrol vehicle. While inside the vehicle, Deputy Luoma described Hernandez's behavior as, *“...he was still ramped up. He was*

still amped up you know as far as you know it took quite a bit. As far as my part on the passenger side once we got him inside the car I shut the door, Deputy Gray still had an issue with him trying to stick his legs out the driver's side of the back of the patrol car. He was screaming, Mr. Hernandez was screaming help me help me even though nobody was touching him or nobody was you know even in contact with him. Once the door was closed I went back to my car briefly or briefly spoke to Deputy Gray and then a short time later I heard you know Mr. Hernandez or a bunch of banging coming from the back of the car."

While dealing with Hernandez, Deputy Luoma observed blood coming from his mouth due to an injury he sustained during the incident. Deputy Luoma made the decision to put a spit mask on Hernandez due to his recent behavior and not wanting there to be a possible bodily fluid exposure.

EVAC responded to the scene and provided medical aid to Hernandez. Deputy Luoma advised deputies were eventually able to calm Hernandez down and Hernandez was later transported to Advent Health Fish Memorial.

Deputy Luoma was asked if while looking back, would he do anything differently, at which time Deputy Luoma responded, *"I would do a lot of things differently, you know, obviously, the, the strike to him, you know, it wasn't something that we've trained in, it wasn't something that was, you know, intentional, you know. As far as the pill coming out of his mouth? Sure, there's a lot of things that could have been done differently; push them off to the side, remove him from the hood, you know, stand him up and walk him back so we can secure it even more. You know, have other deputies come in to assist us or use other techniques."*

Additionally, while speaking about the technique Deputy Luoma stated, *"Just I know that there's a lot of you know, I could have done a lot of other techniques could have been used versus the one that I use. I understand that the technique that I used was not an approved or a trained technique."*

Deputy Luoma was asked if he violated the following General Orders, and his responses are detailed below:

GO-026-02.IV.B.3 – Any other conduct or action, on-duty or off-duty, of such seriousness that disciplinary action is considered warranted.	Yes
GO-026-02.IV.4.C.5.g – Failure to follow general orders	No
Go-026-02.IV.D.7.c – Excessive force resulting in injury	No
GO-026-02.IV.D.9.p – Use of equipment BWC	Yes

GO-026-02.IV.G.1.a – General Proficiency No

GO-026-02.IV.4.g.2.a – Knowledge of official general orders and
pertinent standard operating procedures No

On March 3, 2022, the Internal Affairs investigation was presented to Chief Deputy Joseph Gallagher and the executive command staff. Upon completion of the presentation, Chief Deputy Gallagher sustained the aforementioned General Order violations against Deputy Luoma:

GO-026-02.IV.B.3 – Any other conduct or action, on-duty or off-duty,
of such seriousness that disciplinary action is
considered warranted. Sustained

GO-026-02.IV.4.C.5.g – Failure to follow general orders Sustained

Go-026-02.IV.D.7.c – Excessive force resulting in injury Not-Sustained

GO-026-02.IV.D.9.p – Use of equipment BWC Sustained

GO-026-02.IV.G.1.a – General Proficiency Sustained

GO-026-02.IV.4.g.2.a – Knowledge of official general orders and
pertinent standard operating procedures Sustained

EXHIBITS:

- A. Report of Investigation
- B. Official Correspondence
- C. Response to Resistance
- D. VSO Report 21-23726
- E. CAD History
- F. Photographs of Hernandez's Injuries
- G. Bolo Email for Hernandez
- H. BWC Audit
- I. Certified Letter Receipt (Anna Figueroa)
- J. Transcript of Interview with Deputy Nicole Richardson
- K. Transcript of Interview with Deputy Lindsey Matusick
- L. Transcript of Interview with Deputy Donald Gray
- M. Transcript of Interview with Sergeant Omar Bello
- N. Digital Evidence

WITNESSES:

Volusia Sheriff's Office

123 W. Indiana Avenue

DeLand, FL 32720

Sergeant Omar Bello Deputy Nicole Richardson
Deputy Lindsey Matusick Deputy Donald Gray
Deputy Bryan Luoma

Civilian Witnesses

(Last Known Addresses)

Ana Figueroa

961 Liskeard Avenue

Orange City, FL 32763

(386) 215-5730

Tara Tillis

363 Diamond Street #A

Deltona, FL 32725

(407) 300-7369

Jose Rodriguez

562 Fort Smith Boulevard

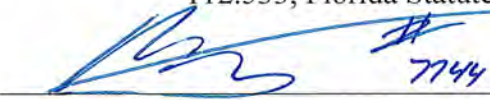
Deltona, FL 32725

(386) 601-4145

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true to the best of my knowledge and belief.

AND

I, the undersigned, do hereby swear, under the penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the suspect of the investigation of any rights contained in ss. 112.532 and 112.533, Florida Statutes.

DETECTIVE:  # 7744 DATE: 3/11/22

Detective Sergeant Ben Gordon
Internal Affairs Detective Sergeant

STATE OF FLORIDA
COUNTY OF VOLUSIA

Sworn to (or affirmed) and subscribed before me by means of physical presence or online Notarization this 11th day of March, 2022 by Sergeant Ben Gordon



SIGNATURE OF NOTARY PUBLIC-STATE OF FLORIDA

PRINT, TYPE, OR STAMP COMMISSIONED NAME OF NOTARY PUBLIC

PERSONALLY KNOWN OR PRODUCED IDENTIFICATION

TYPE OF IDENTIFICATION PRODUCED

APPROVED BY:  # 2267 DATE: 03-11-2022

CHIEF DEPUTY JOSEPH GALLAGHER
VOLUSIA COUNTY, FLORIDA

Chief Deputy
JOSEPH GALLAGHER

OFFICE
(386) 736-5961



VOLUSIA COUNTY SHERIFF'S OFFICE

123 WEST INDIANA AVE • P.O. BOX 569 • DELAND, FLORIDA 32721-0569
(386) 740-5134 (FAX) • WWW.VOLUSIASHERIFF.ORG

March 4, 2022

Deputy Bryan Luoma, #2513
Volusia Sheriff's Office
Special Operations Section / K-9 Unit

Final Notice of Discipline

Deputy Luoma:

Volusia Sheriff's Office General Order GO-026-02 requires that all "Employees shall adhere to all official Directives and/or orders, and shall faithfully execute all the duties and responsibilities of their assigned position." Because of your actions or inactions documented in IA 21-017, I have tentatively determined you violated the following Sheriff's Office General Orders:

Volusia Sheriff's Office General Orders:

GO-026-02.IV.B.3 – Any other conduct or action, on-duty or off-duty, of such seriousness that disciplinary action is considered warranted.

GO-026-02.IV.C.5.g – Failure to Follow General Order, Standard Operating Procedure, or Order – Employees shall adhere to all official general orders, standard operational procedures, and orders, and shall faithfully execute all the duties and responsibilities of their assigned position.

GO-026-02.IV.D.9.p – Use of Equipment: BWC – Employees shall ensure proper maintenance and utilization of VSO BWC (body-worn cameras) for its intended purpose and in accordance with general order *GO-041-20 Body-Worn Cameras*.

GO-026-02.IV.G.1.a – General Proficiency – VSO personnel are required to maintain the job knowledge, skills and abilities required for the performance of the duties and responsibilities attendant to their positions.

GO-026-02.IV.G.2.a – Knowledge of Official General Orders and Pertinent Standard Operating Procedures – VSO personnel are required to possess a sound working knowledge of the policies and procedures established by general orders and standard operating procedures.

To Wit:

On December 16, 2021, you responded as a backup deputy to a traffic stop in Orange City. Your primary role as a K-9 deputy was to assist with an exterior narcotic sniff of the stopped vehicle. Once you arrived at the scene, you exited your vehicle and remained near your vehicle. During that timeframe, you were allotted ample time to activate your Body-Worn Camera (BWC); however, you failed to do so.

According to GO-041-20.V.H.4.b, when responding to non-emergency or routine calls, or self-initiated activities that require a BWC, the BWC shall be activated upon arriving at the scene and just before exiting the vehicle. You acknowledged during your interview with detectives that you failed to activate your BWC per General Orders.

In addition, during the stop, you observed a subject begin to resist deputies' efforts to be secured. After a brief struggle, the subject was secured in handcuffs and escorted to the front of another vehicle. While a search of the subject's person was being conducted, you observed the subject attempt to access his waistband area and his pockets with his hands. After unsuccessful attempts to verbally tell the subject to stop moving his hands, you grabbed the subject's hands and applied a pain compliance tactic (wrist-lock) to prevent further resistance. The subject began to complain about the pain and continued to resist deputies' efforts, at which point you changed positions and utilized a shoulder lock technique to pin the subject's upper torso to the hood of the pick-up truck.

During the application of the shoulder lock, the subject expelled a blue narcotic pill from his mouth. Upon seeing the narcotic on the hood of the vehicle, the subject lunged towards it with his mouth open in an attempt to conceal or destroy it. To prevent this action by the subject, you struck the subject with a closed fist strike to the side of his face.

Although the closed hand strike you chose to utilize was successful in stopping the subject's efforts, the amount of force applied in that situation was unnecessary. The Sheriff authorizes deputies to use that amount of force that is proportional, reasonable, and necessary under the circumstances to protect themselves and/or others while performing their lawful duties. While it was evident your actions were not malicious, your application of common sense, discernment, and independent judgment was misguided given the fact physical control of the subject was established coupled with situational factors present. You admitted during your interview with

detectives that the strike was not an “approved or trained technique,” and that there were many other lesser force options that you could have applied instead of the closed fist strike.

Deputy Luoma, as a deputy with the Volusia Sheriff’s Office you are held to the highest of standards. You are expected to make appropriate decisions during high-stress situations and utilize the critical decision-making model that is taught and reinforced in training to ensure the force applied is appropriate and proportional to the severity of the underlying events. Your decision-making created an unfavorable perception of the Volusia Sheriff’s Office, which is unacceptable and will not be tolerated.

You have previously been the subject of the following disciplinary action:

08/11/2009	26.2.098	Careless Handling Equipment & Vehicle	Sustained
11/23/2009	26.2.035	Submission of Reports and Documents	Sustained
03/14/2010	26.2.098	Careless Handling Equipment & Vehicle	Sustained
04/16/2010	26.2.098	Careless Handling Equipment & Vehicle	Sustained
10/27/2011	26.2.034	Failure to Follow Directive or Order	Sustained
08/15/2012	26.2.131	General Proficiency	Sustained
08/31/2015	26.2.098	Careless Handling Equipment & Vehicle	Sustained
08/16/2018	26.2.098	Careless Handling Equipment & Vehicle	Sustained

In determining your discipline, I have considered your prior disciplinary history, performance, length of service with VSO, and seriousness of the circumstances of the most recent violations.

Deputy Luoma, you were served with an “Intent to Suspend” letter on March 4, 2022, advising you of Division Chief Timothy Morgan’s intent to suspend you from duty without pay for forty (40) hours. You appeared before me on March 4, 2022, and had the opportunity to offer any mitigating circumstances for consideration prior to the final discipline. After earnest consideration, my final decision is as follows:

- 1) Suspension from duty for **sixteen (16) hours without pay**. In lieu of serving the suspension without pay for its entirety, you may elect to use your personal leave.

- 2) Transfer from Support Operations Division, K-9 Unit to Support Operations Division, Court Services. However, you will be temporarily reassigned to Support Operations Division, Airport Unit. Due to the transfer, you will no longer be eligible for the 5% special assignment pay or additional K9 Handling and Care hours.
- 3) Mandatory use of force, de-escalation, or similar training as determined by the Training Captain.

On March 4, 2022, you notified the Office of Internal Affairs through your chain of command, **electing to utilize personal leave in lieu of the suspension.** Therefore, your one-time maximum allotment of sixty hours (60) will be deducted sixteen (16) hours. Your remaining balance of the one-time allotment will be forty-four hours (44). The date of your suspension, will be **Wednesday, March 23, 2022 and Thursday, March 24, 2022 from 0600 hours to 1400 hours** as determined by Captain Fortin.

You may not work any additional hours (i.e., scheduled days off) during the pay periods in which the suspension is taken. Additionally, during the time of your suspension, you are prohibited from taking any law enforcement action, or act in the capacity of a Deputy Sheriff.

Note: Even though you are paid on a weekly basis, the VSO operates on a two-week pay-period for the purposes of overtime calculation.

If there are any concerns or questions troubling you that I am not aware of, please advise me so I will have the opportunity to assist you in correcting this problem.

Pursuant to the Volusia Sheriff's Office General Orders, Volusia Sheriff's Office General Counsel and Human Resources Director have reviewed and concurred with this intended action.

Any subsequent discipline can result in more severe administrative action, up to and including dismissal. Take due care and govern yourself accordingly. Be especially aware of **Progressive Discipline GO 26-01.**

Sincerely,



JOSEPH F. GALLAGHER
CHIEF DEPUTY

cc: VSO Human Resources
VSO General Counsel
Internal Affairs

JG/bg 041L00015.22



This letter was read and received by:

Deputy Bryan Luoma, #2513

Date: 3/4/22

Time: 1428

Served by: JG 7147